Saskatchewan
Workers' Compensation
Act Review Committee

Review Of
The Workers' Compensation Act

A Report of the
Workers' Compensation Act
Review Committee

August - 1992

Saskatchewan

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Workers' Compensation
Act Review Committee

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August 1992

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Dear Sir:

We are pleased to present our report on the Review of The Workers' Compensation Act, 1979.

Respectfully,

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INTRODUCTION

There is overall support for the basic system of workers' compensation. The majority of the submissions made during public hearings called for changes in the interpretation and administration of the Act. The recommendations in this Report have therefore been designed to bring about necessary changes in administrative structure and procedure while preserving intact the basic principles of the system which include:

- protection of workers from loss of income resulting from work related injuries regardless of fault;

- protection of employers from court actions by injured workers; and

- maintenance, through contributions by employers, of an accident fund sufficient to fully fund all liabilities and administered by a statutory Board that represents the interests of both employers and workers.

Representations made to the Committee during public hearings showed a clear consensus that the ultimate objective of workers' compensation should be the return of injured workers to a position of independence by re-establishing them in suitable productive employment.

The recommendations that follow are designed to direct the focus of workers' compensation to a program of medical and vocational rehabilitation designed to return workers to a meaningful career in the work force.

The Committee cautions, however, that as the recommendations are all interrelated, they must be implemented as a total package.

ADJUDICATION OF CLAIMS

- Workers' compensation legislation came into being as a result of the need for workers and employers to find a means of settling work-related injury claims that would eliminate the delays, costs and uncertainties inherent in court proceedings. The gist of the arrangement embodied in the legislation was that workers who suffered work-related injuries gave up the right to sue their employers in exchange for a guarantee that they would be compensated for loss of income resulting from their injuries.

- The legislation was intended to benefit both employers and workers. Employers gained the advantage of immunity from lawsuits. Workers gained the advantage of becoming entitled to benefits without having to prove negligence on the part of their employers; payment of benefits was guaranteed through the establishment of an accident fund maintained by annual levies on employers and administered by a statutory board.

- One of the objectives of the legislation was the elimination of the adversarial approach inherent in the court system. Employers no longer became involved in the process of adjudicating and settling claims. That function is delegated to the Board, whose responsibility it is to protect the interests of all parties concerned.

- There is no onus on the worker to prove his or her claim. It is the Board's responsibility to take the initiative in assembling all necessary reports and other evidence that can be obtained with a view to determining the question of eligibility.

Accident Reports:

- Timely and proper completion of all reports required by the Act are essential for the prompt and satisfactory disposition of claims.

- Report forms for the use of both workers and employers must be made available by the Board at all places of employment covered by the Act.

Worker Report forms should be supplied by the Board on the request of occupational health and safety committees, unions or other interested parties.

- Forms are being amended for the convenience of those who are required to complete them while at the same time providing the Board with the information required to process claims and to transmit, to the Occupational Health and Safety Branch, information on unsafe work practices and unsafe work conditions.

- The Board may find it necessary to supplement the information contained in the worker's and employer's reports. In that event the following rules should be observed:

  - no verbal information received is to be used unless confirmed in writing by the source;

  - notification of all evidence from all sources used must be given to the claimant when making a decision; the employer must get a copy of the decision;

  - telephone conversations with the claimant must be confirmed by letter to the claimant giving details of the conversation. A copy of the letter to the claimant will serve as a memorandum in the claimant's file rather than the present practice of writing a separate memorandum to the file;

  - it will sometimes be necessary for the Board to make enquiries of the claimant to clarify or supplement the information contained in the claimant's initial report. Such enquiries must be conducted with discretion so that claimants are not left with the impression that they are being unjustly accused or suspected of making false claims; and

  - any enquiries or investigations made by the Board or its officials must be relevant to the claim. The Board has no need or right to ask questions about personal or private matters that have no bearing on the

claim.

- While the primary purpose of the reports filed by the employer and the employee is to enable the Board to adjudicate the claim, report forms should be designed so as to enable the Board, wherever possible, to identify the cause of the accident. Such information can be used, not only by the Board, but also by Occupational Health and Safety Branch to which particulars of the accident should be transmitted.

Considering and Weighing Evidence

- Since the injured worker's only legal remedy is to claim compensation under the Act, there is a very heavy onus on the Board and its employees involved at any level of the decision-making process to ensure that all claims are thoroughly investigated and fairly adjudicated.

- Section 25 of the Act provides that; *"A decision of the Board shall be upon the real merits and justice of the case and it is not bound to follow any legal precedent."* That section confers on the Board a very wide discretion to deal with claims, as it must, on an individual basis. All individuals who deal with the Board are unique, and the circumstances of their cases are unique. The same injuries will affect, both physically and psychologically, different individuals in different ways. Some will require more time than others to recover from a similar injury. These and many other variable factors must be understood and taken into account in dealing with individual cases.

- In the very nature of workers' compensation cases, the opinions of physicians and other health professionals are a common and important source of evidence. The Board, however, is not justified in rejecting a claim solely on the ground that it is not supported by conclusive medical evidence. The Board has a duty to consider all of the facts that are disclosed by the evidence and to draw reasonable inferences from these facts. In drawing an inference favourable to the claimant, the Board does not have to be satisfied that it is the only one that can be drawn but merely that it is a reasonable one in the circumstances.

- When important decisions are to be made by the Board or any of its officials, the claimant should not only be entitled, but be actively encouraged, to attend, either alone or accompanied by a family member and, if desired, by any other representative of his or her choice.

- Claimants are entitled to full disclosure by the Board of all information and reports or other documents considered by the Board or its officials in making a decision including the sources of such information.

- Claimants and employers affected by Board decisions are entitled to know what policies have been applied in arriving at decisions.

- All Board directives and written policy statements relative to the adjudication of claims should be consolidated into a policy manual which should be open to public inspection on request by employer, employee and injured worker organizations, the Saskatchewan Medical Association and other interested parties.

- The rule that must invariably govern decision making at all levels of the Board structure is that, whenever any reasonable doubt exists with regard to any aspect of a claim, the benefit of that doubt must be given to the claimant. The Board must put in place a system of monitoring decisions made by its officials and employees to ensure that the rule is applied in all cases.

- Section 49 of the Act provides that: *"Where the Board is unable to determine an issue in favour of the person claiming compensation, it shall provide that person with written reasons for its decision."*

- Apart from Section 49, the Board, like any other decision-making body, should, as a matter of course, give reasons for its decisions so that those who are affected by such decisions know the basis on which they were made.

- Reasons for decisions must include the following:

- A concise statement of the issues to be resolved and any background information necessary to clarify the issues;

- a detailed review of all the evidence in which the source of all the evidence is identified;

- an explanation of the way in which the decision maker has resolved any conflicting evidence; and

- sufficient details of the way in which the decision has been arrived at to make it apparent that all the evidence has been considered and that the benefit of any doubt has been given to the claimant.

• Copies of all medical reports considered by the Board in making its decision must be attached to the letter to the claimant.

The Committee recommends that:

(1) the guidelines in this section of the Committee's Report form the basis of the Board's policy regarding the adjudication of claims; and

(2) the Board institute a system of monitoring decisions made at all levels to ensure that the policy is consistently applied.

DETERMINING WAGE LOSS - 'DEEMING' - RETURN TO WORK - RETRAINING

- These subjects are being dealt with together because they are all interrelated.

- Prior to the enactment of The Workers' Compensation Act, 1979, every worker who sustained a particular injury was paid, by way of a pension for life, the same percentage of pre-accident salary regardless of the impact, if any, of the injury on the worker's post-injury earning capacity. Pensions were supplemented at the discretion of the Board.

- The 1979 Act was designed to come to grips with the reality that workers in different occupations who suffer the same injury do not necessarily suffer the same loss of earning capacity. The thrust of the 1979 Act was to compensate the worker for the loss, if any, of earning capacity resulting from the injury. The Board was thus relieved of paying pensions for life to all workers who suffered a disability but was required to assume responsibility for maintaining at pre-injury levels, until age 65, the income of those workers whose earning capacity had been impaired as a result of their injuries.

- It was contemplated that the "income replacement" or "wage loss" system adopted in the 1979 Act would work to the advantage of both the Board and the injured worker. If and when the worker returned to productive employment, the Board would be required to pay only the difference, if any, between the worker's pre-injury and post-injury earnings. The worker would be assisted in attaining the goal of independence through the return to productive employment and would be covered for any loss of income both before and after the return to work.

- It has always been recognized that the "income maintenance" approach to compensation can function only in conjunction with a comprehensive and aggressive program having as its objective the return of the worker to his or her former occupation or to some alternative suitable and available employment. It was anticipated that, in many cases, workers would have to

be retrained in new occupations.

- The system has operated as intended for workers who have been able, despite their injuries, to return to their former employment after a relatively short period of treatment and recuperation. Others, because of the nature of their injuries, have been unable to return to their former employment, but have been able to find alternative employment or have been retrained by the Board for new occupations.

- Other workers, however, have been unable to return to their pre-injury employment and have received no assistance in finding alternative employment and no adequate retraining. The income maintenance payments to which they are entitled under the Act have been discontinued or reduced through a practice that came to be known as "deeming". The practice arises out of the Board having taken the position that Section 69(1) of the Act gives it the authority to terminate or reduce the worker's wage loss entitlement when the Board considers or "deems" the worker capable of earning income from an occupation unilaterally decided upon by the Board. The Board is of the opinion that "deeming" can and should take place when it determines that the worker is capable of working at that occupation and that there is no onus on the Board to demonstrate that there is an actual job available to the worker.

- The last Committee of Review made a series of recommendations which, if accepted, would have severely restricted the practice of "deeming". The Board's response to these recommendations included the following comment: "The Board cannot insulate workers from the general economic situations. In other words the Board cannot guarantee employment opportunities but it can guarantee 'job readiness'."

- An injured worker who had a job prior to being injured is unemployed not because of what the Board describes as "general economic situations" but as a direct consequence of the injury. It is, therefore, this Committee's view that it is the Board's responsibility to continue full wage loss benefits until the worker has become re-established in the work force. If

it is impossible to rehabilitate or establish the worker in the work place, then the Board's responsibility to the worker will continue until the age of 65.

- Rehabilitation and retraining form the foundation of the workers' compensation system. Rather than deeming, the Board should manage a vocational rehabilitation program that recognizes that the Board, the injured worker and the employer have a common interest in re-establishing the worker in productive work. There must be a commitment by the Board to invest money in the program with a view to enabling the injured worker to achieve his or her aspirations and at the same time eliminate or reduce the costs of paying long-term wage loss benefits.

- Except in cases where it is clear that the worker will be able to return to his or her employment with the same employer, the Rehabilitation Branch must, at the earliest possible date following the injury, begin the process of developing, in consultation with the worker and his or her physician, a plan for the return to work. Early intervention by the Rehabilitation Branch will provide assurance to the worker and the worker's family that the Board is committed to providing the necessary assistance to enable the worker to return to productive employment. Development of a rehabilitation plan as soon as possible following the injury will accelerate the whole process of returning the worker to a position of independence.

- When it is ascertained that the worker will be able to return to his or her former occupation, the vocational rehabilitation officer should be actively involved with the worker and the employer in facilitating the return of the worker, as soon as he or she is sufficiently recovered, to work on a full time or part-time basis.

- Workers and employers who made submissions to the Committee were in agreement that assigning workers to "light duty" in the workplace can be helpful in re-integrating injured workers into the work force. It is clear, however, that the following safeguards must be put in place to prevent abuse and minimize the risk of further injury to the worker and the

risk of injury to co-workers.

- The option of light duty must be voluntary for both the employer and the injured worker.

- The nature of the light duty to be performed must be meaningful. It must be identified and agreed upon by the doctor, worker, and vocational rehabilitation officer. The vocational rehabilitation officer will present a written plan for approval by the employer and the Board and co-ordinate and monitor the program.

- In order for the concepts of light duty, retraining and rehabilitation to succeed, the employer and other interested parties must cooperate in promoting the rehabilitation of the injured worker.

- Light duty assignments with any employer(s) should be treated as a rehabilitative measure; workers on light duty must be supernumerary to, rather than part of, the normal staff complement.

- Workers on light duty assignments should be paid by the employer who will be reimbursed by Workers' Compensation Board at 90% net, thereby ensuring the worker will receive his or her group benefits. The employer should not be expected to pay the wages of a worker who is not engaged in regular duties but is in the workplace as part of a program of rehabilitation.

- There should be no additional risk to the employer who participates in a light duty program. If a worker is further injured <u>while engaged in duties that have been identified as part of a light duty program approved by the Board</u>, the costs associated with such re-injury should be charged to the second injury fund.

- While the preferred option is to have the worker return to his or her former employment, that option is available only when there is no risk of further injury to the worker and no risk to co-workers of the returning

injured worker. When it is determined that the worker cannot safely return to his or her former job, the vocational rehabilitation officer must become actively involved in co-ordinating the placement of the injured worker in alternative employment. Retraining for the new position may be required. Most employers will wish to see injured workers achieve their goal of returning to work. The employer will have a financial incentive to provide alternative employment in that there will be an immediate elimination or reduction of the cost to the employer of the income maintenance payments which the worker would be receiving if not employed.

- It may be that, because of the nature of the employer's operation, it is impractical for the employer to provide an employment opportunity for the injured worker. In that case, the vocational rehabilitation officer should approach other employers in the same industry group to determine whether any of these employers can find suitable employment for the injured worker. Since all the employers in the industry group will be bearing the cost of providing the injured worker with compensation for wage loss, the employers in the industry group will have a common interest in co-operating with the vocational rehabilitation officer in finding suitable employment opportunities for injured workers.

- If the worker cannot be placed with the former employer or an employer in the same industry group, the vocational rehabilitation officer will be required to find employment in another industry group.

- The former employer or any other prospective employer must be encouraged to employ the worker. Incentives to hire injured workers can be offered in the following ways:

  - by the Board absorbing the cost of retraining the worker and making any modifications required in the workplace to enable the worker to function despite his or her physical disabilities; and

  - by charging to the second injury fund any costs of compensation arising out of further injury to the worker.

Retraining

- Retraining is an option that must always be considered in developing a plan for the return of the injured worker to employment. If the retraining program is to achieve the desired result of enabling the worker to reach the goal of independence, there will be substantial costs involved and there will have to be a commitment by the Board to making an investment in the program. Any costs involved will represent only a fraction of the amount that the Board will have to pay out in wage loss benefits until the worker reaches 65 if the worker is not returned to the work force or is forced to accept a job at a rate considerably lower than pre-injury earnings, with little prospect for advancement.

- Any retraining plan must incorporate the following features:

  - The injured worker must be totally involved with the vocational rehabilitation officer in the choice of a new career and at all stages of the planning process in consultation with the physician if required.

  - The plan must be realistic having regard to the medical limitations, the age, aptitude and educational qualifications of the worker, but the fact that the worker will have to upgrade his or her education prior to entering a training course should not prevent the worker from being retrained if the worker has the commitment and desire to undertake upgrading.

  - The worker must be provided with any professional advice necessary to determine what course of training would be most appropriate for that worker.

  - The object of the retraining program must be to enable the worker to obtain employment in a new occupation which will establish the worker in a career with the potential for earnings at least comparable to what the worker could have earned in his or her former employment.

- The selection of a training course will require the best professional advice available regarding fields of employment where there is a shortage of workers.

- The length of a training course will vary greatly according to the needs of the individual and the nature of the course. If a training course is of less than two years duration, benefits will continue until the worker has obtained employment. When the worker has undergone a training course of two years or more, in addition to any educational upgrading required to enable the worker to enrol in the course, the worker should, after having been given a reasonable opportunity to find employment, be considered capable of earning the starting salary applicable to the new occupation for which the worker has been trained.

- There may be cases where the age of the worker, his or her medical limitations, educational qualifications and other circumstances make it unrealistic to retrain the worker or even to find suitable employment. In such cases, the only course open to the Board may be to accept the reality that the worker should continue to receive wage loss compensation until age 65.

- Any program of vocational rehabilitation or job placement must be based on the assumption that the worker is committed to returning to suitable and available employment and is willing, if necessary, to undertake retraining. Based on the submissions that were made to this Committee during public hearings, the Committee is confident that the overwhelming majority of injured workers will fully co-operate in any meaningful efforts by the Board to facilitate the return of the worker to productive employment where the worker's physical limitations permit. It may be that there will be isolated cases of refusal by a worker to avail himself or herself of opportunities for employment, or to participate in retraining, without good reason, in which case it would be proper for the Board to suspend or terminate wage loss payments. The Committee believes that such occurrences will be extremely rare.

- The Committee's comments on the vocational rehabilitation of injured workers apply equally to dependant spouses. Section 115(c) authorizes the Board to encourage dependant spouses to become self sufficient. Spouses who have chosen not to enter a retraining program until after the youngest child reaches the age of 18 or until after the expiry of five years following the death of the worker should not be denied the opportunity to participate in a training program thereafter.

The Committee recommends that:

(1) the Board institute a policy for vocational rehabilitation of injured workers based on the guidelines set out in this section of the Report;

(2) the current Board practice of "deeming" be discontinued;

(3) the Board redefine the duties of vocational rehabilitation officers to meet the recommendations in this section; and

(4) the legislation be amended to give effect to the recommendations in this section of the Report. Details of the amendments required are set forth in the section of this Report entitled "Legislative Changes".

THE FOREGOING RECOMMENDATIONS HAVE BEEN MADE ON THE EXPRESS UNDERSTANDING THAT THEY ARE INTERRELATED AND WILL ONLY ACHIEVE THE DESIRED RESULT IF THEY ARE IMPLEMENTED AS AN ENTIRE PACKAGE.

THERE MUST BE A COMMITMENT ON THE PART OF THE BOARD, INJURED WORKERS, EMPLOYERS, PHYSICIANS AND OTHER INTERESTED PARTIES TO PROMOTE AND IMPLEMENT A COMPREHENSIVE PROGRAM OF MEDICAL AND OCCUPATIONAL REHABILITATION WITH A VIEW TO RETURNING THE INJURED WORKER TO MEANINGFUL EMPLOYMENT AT THE EARLIEST APPROPRIATE DATE.

MEDICAL ISSUES

- Although the Board pays the cost of medical care for injured workers, the Board has no right to intervene in the treatment plan. Decisions regarding treatment are to be made by the worker's physician in consultation with the worker.

- Sections 54(a) and 56 provide that any physician, surgeon or hospital official who attends to or is consulted with respect to any injury is required to furnish any reports in respect of the injury in any form the Board may require. The Board's right to reports under Section 54 and 56 should be confined to any examination or treatment after the injury. The Board should not have the right to demand reports from any doctor or hospital by whom or in which the worker was previously treated.

- The Saskatchewan Medical Association (SMA) has indicated that physicians wish to confine themselves to providing opinions about the medical condition of the worker and any physical limitations arising out of the injury. Doctors should not be called upon to decide whether the worker should receive compensation, and should not be asked to give an opinion on anything but medical matters.

- The Board pays for written medical reports. According to the SMA the Board does not pay for reports given over the telephone. In addition to the time occupied on the telephone, considerable time is taken up in reviewing the file with a view to giving the report. Doctors should be paid for telephone consultations with the Board when such consultations have been initiated by the Board or its officials.

- Section 57 of the Act reads: *"A worker who claims compensation or to whom compensation is payable under this Act shall, where requested by the Board, present himself for examination by a medical consultant or consultants."*

  The current practice is that, when the Board considers it necessary that the worker be examined by a consultant, a request is made to the worker's

doctor to arrange for an examination of the worker by a specialist. The choice of specialist is left up to the worker's doctor unless the doctor asks that the Board recommend a specialist. The current practice should continue, but it would always be preferable if the choice of specialist is made by the worker's doctor. There has, apparently, been no difficulty in getting the consent of the worker's doctor to refer the patient to a specialist. If the doctor's consent cannot be obtained, the Board has the right to ask that the worker be examined by a specialist chosen by the Board.

- When the opinion of a specialist is sought, the Board should not attempt to influence the specialist's opinion by preparing questions to be answered. The examination must be, and must be seen to be, free from any involvement by the Board.

- Chiropractors are medical "consultants" under section 57 and are therefore eligible to serve on medical boards.

- When a medical board is convened, it should consist of three doctors: one chosen by the worker's physician, one by the worker and one by the Board.

- Chiropractors should be eligible to serve as members on Medical Review Panels and legislation should be amended accordingly.

- The Board and its officials rely very heavily on medical evidence in making decisions that profoundly affect the life of the injured worker and the worker's family. Workers are entitled to be assured that the decisions of the Board are based on medical opinions that are, and are seen to be, independant. The duties of the medical staff of the Board must, therefore, be clearly defined so as to ensure that the medical personnel employed by the Board are not involved, and are not seen to be involved, either in directing the medical treatment of workers or in providing opinions to the Board that are acted upon by the Board in decisions on any aspect of the worker's claim. There is ample provision in the Act for the Board to obtain from a medical consultant or consultants any medical opinion it may

require in addition to the reports submitted by the worker's doctor and therefore the Board has no need to seek the advice of its employees in the medical department.

- The role of physicians employed by the Board should be confined to the following activities:

  - interpreting and explaining medical reports and data to employees of the Board;

  - assisting the Board in determining when the opinion of an independent consultant should be requested and making arrangements with the worker's doctor to have the worker examined by a consultant;

  - assisting the claims department in identifying cases where it is likely the worker will require the services of the Rehabilitation Department, with a view to involving the Rehabilitation Department in the case at the earliest date possible following injury;

  - determining the level of permanent functional impairment; if a worker is dissatisfied with the decision he or she has the right to appeal to a Medical Review Panel; and

  - collecting data on workplace injuries and making it available to the Board, the medical profession, occupational health and safety committees and to the Occupational Health and Safety Branch.

The Committee recommends that:

(1) the Board institute a policy for medical services based on the principles set out in this section of the Report;

(2) the duties of the medical staff of the Board be confined to those indicated and that the number of medical staff be reduced accordingly;

(3) the staff of the Medical Department should have special training in occupational health; and

(4) the legislation be amended to give effect to the recommendations in this section of the Report. Details of the amendments required are set forth in the section of this Report entitled "Legislative Changes".

Injured Workers' Program

There is a recognition by all parties concerned that early referral to the Injured Workers' Program at the Wascana Rehabilitation Centre for the assessment and subsequent rehabilitation of injured workers is essential to the successful outcome of the program.

The Committee therefore recommends that:

(1) the injured worker's physician should, in appropriate cases, refer the injured worker to the Injured Workers' Program as soon as possible for assessment;

(2) injured workers who have been assessed as suitable candidates for rehabilitation should be admitted to the program as soon as possible; and

(3) provision should be made for interim treatment in the injured worker's community while awaiting admission to the program.

COMMUNICATIONS

- Despite the fact that previous Review Committees have stressed the need for the Board to improve communications, poor communication remains one of the greatest weaknesses of the workers' compensation system in this province. Many of the complaints and frustrations that were drawn to the attention of the Committee during its public hearings could have been avoided if some effort had been made by the Board to implement recommendations of previous Review Committees.

- Serious deficiencies exist in the area of communication both with the public and with individual claimants.

Communication With The Public

- The 1982 Review Committee recommended that the Workers' Compensation Act be reorganized and rewritten with a view to making its provisions more understandable. No action has been taken on that recommendation. If the mandate of this Committee is extended as recommended in its first report, the reorganization and rewriting of the entire Act, including a comprehensive index, is one of the tasks proposed to be undertaken by the Review Committee.

- The "Information Package" prepared by the Board should be further developed to include any changes brought about as a result of this Committee's recommendations, and the package should be made available on request to employer, employee and injured workers' organizations, the Saskatchewan Medical Association and any other interested parties.

- There are Board policies and directives to staff governing every aspect of workers' compensation. These policies are not made public with the result that injured workers and others affected by Board decisions have no knowledge of the policies and procedures by which decisions have been arrived at. The 1986 Committee of Review recommended that "major Board orders or directives to its staff regarding policy or procedural matters

should be made public". The Board's response indicated that "it would commence doing this as early as possible". The Board added "however, given the number of directives involved and the fact they were not originally written for public consumption will likely mean in many cases a rewrite". The Board does not explain why the directives were not written for "public consumption" since members of the public are so greatly affected by such directives, nor did the Board explain why directives are written in such a way as to make them unsuitable for publication. In any event, policy statements and directives which form the basis for decisions must be made known to those who are affected by decisions so made. Policy and procedural directives must be consolidated and made available to the public. The Board cannot be permitted to continue to administer the Act in accordance with policies and procedures that are not open to public scrutiny.

- In the chapter of its report dealing with adjudication of claims, the Committee stressed the need for the Board and its officials to provide the claimant with a comprehensive written report explaining the basis for a particular decision. Summaries of major decisions by the Board should be prepared and published for the information of injured workers, employer and employee organizations and other interested parties.

- <u>Annual Report</u>

  Annual reports are a valuable source of information about an organization's policies, programs and financial status. The Committee recommends changes be made to the Board's annual report so that it may be more informative. The report should:

  - consolidate all information in one book; and

  - contain more statistical charts and graphs with a section on the CAUSES of injury. This information would be useful to employers, workers, occupational health and safety committees and to the Occupational Health and Safety Branch;

- contain information about each department which explains policy or program changes and goals; and

- reflect changes made in response to the Committee's recommendations, the results of such changes and the reasons for not implementing recommendations.

Communications With Individual Claimants

- Past Review Committees have commented at length and made numerous recommendations on the subject of oral and written communications with injured workers. Based on the number of complaints received by the Committee and the many communications from the Board that have been read by the Committee, it is apparent no progress has been made in establishing better communications.

- Many of the letters originating at all levels of the Board structure were poorly composed and contained far too little detail given the importance of the decision that was being communicated. A claimant receiving such a letter could, and probably did, get the impression that the writer had no understanding of the importance of the decision to the worker and the worker's family, or did not care. In contrast to the wholly inadequate information given to the claimant, a great deal of attention is given to the preparation of memos to be placed on the file.

- The Committee recently reviewed a number of letters from the Earnings Replacement Division. In those cases where the claimant was "deemed" capable of employment, the letters merely stated the nature of the "employment" and the monthly salary. For example, "We consider you capable of employment as a light duty janitor, parking lot attendant or security guard earning $866.66 per month."

- The writers of the letters did not consider it necessary to explain how the decisions were arrived at or what was meant by phrases such as "light duty janitor", "light maintenance" or "suitable security". Considering that the

workers were being informed that their benefits were being reduced by the amounts they were "deemed" to be capable of earning, it might be expected that the writers would at least attempt to justify the decisions with a full explanation.

- Along with the letters on "deeming" the Committee received copies of the memos placed on the file in each case. The memos contain more information than was given to the worker. Why was not all the information incorporated into the letter to the claimant? Why were two documents prepared - the letter to the claimant and the memo for the file - when one would have sufficed? It can only be concluded that the Board considers it more important to have on file a justification for the decision than to give the claimant the reasons for the decision.

- The letters reviewed by the Committee show a lack of understanding by the Board about communication or an unwillingness to make the necessary effort to communicate effectively. Board members and senior managers must set an example in their own communications and put in place immediately the means of ensuring that all communications demonstrate a commitment to the fair and just administration of the Act and show respect for the workers and others with whom they are in communication.

The Committee recommends that:

(1) the guidelines in this section of the Report form the basis of the Board's policy regarding communication;

(2) the Board institute a system of monitoring decisions made at all levels to ensure that the policy is consistently applied; and

(3) in its annual report, the Board create a section accounting for what has and has not been done regarding the Committee's recommendations.

OTHER CONSIDERATIONS

- **Section 145**

The five safety associations which employers have formed under section 145 for the purpose of injury prevention and safety education have indicated that it is important to have the injury experience of individual employers if they are to be effective. As the safety associations would be using this information to formulate and conduct appropriate safety programs, the Committee agrees that this information would be extremely valuable to them.

The Committee therefore recommends that all employers, whether or not they belong to safety associations, must release safety data upon the request of the Board who would make the information available to the safety associations. The Board has the legislative authority to enforce the release of safety data.

- **Safety Grants and Safety Education**

The Committee recommends that the role of the Occupational Health and Safety Branch be restricted to enforcing the Occupational Health and Safety Act and the regulations and to education about the Act and regulations. The Board should be responsible for job safety training and safety education. The Branch and the Board should work together to exchange information which affects their respective roles.

The Board's safety training and education programs should be conducted through the establishment of additional grants, by contracting services and by paying for training materials or fees for employers and employees. Where the Board sees a need for a safety training and education program, it should develop a program and charge the cost of it to the industry group.

The Committee recognizes the merits of the current safety grant program but recommends further examination to determine if there are ways in which it can be strengthened or expanded to provide needed safety education to

workers and employers in various sectors.

- Occupational Health and Safety Branch Budget

The Committee recommends that the Board exercise greater budget control by ensuring an annual budget and Branch objectives are prepared before monies are released and that year end accounting of expenditure is provided. Currently, there is little accountability for the money released to the Branch.

The Branch should continue to function at arm's length from the Board by focusing on enforcement of the Occupational Health and Safety Act but should be accountable to those funding its programs.

- Section 176

This section provides that the Board may lease or purchase real property and construct or alter buildings required for the purpose of the Board only with Cabinet approval. The Committee received a recommendation from the Board suggesting that Cabinet approval not be required for matters relating to property as the Board has very extensive financial and other resources.

The Committee does not agree with this recommendation. The Board does not have extensive financial resources. All the funds it has have been contributed by assessments on employers for the use and benefit of injured workers. The Committee expresses its concern that the Board was not more open in the process of acquiring its new premises and that there was a lack of consultation with the interested parties.

- Sections 29 and 30

It was suggested to the Committee that the Board is in error in taking the position that the presumptions in sections 29 and 30 can be rebutted by evidence to the contrary. The Committee referred the matter to the Civil Law Division of the Department of Justice whose opinion is that the Board

is correctly interpreting these sections. The Committee concurs with this opinion. However, the Committee would like to stress that the onus is on the Board to prove the contrary and that in dealing with this section the Board must keep in mind that the benefit of doubt must be given to the injured worker.

- Section 10 - Inclusion of Farm Employees

Although the Committee recognized there was a need for farm employees to receive some sort of coverage, it also recognized the unique nature and special needs of the farming sector. There is a need to educate farmers on the benefits of workers' compensation and other insurance coverage for farm employees. Some agencies and educational institutions are currently providing some farm safety education. The Department of Labour, a farm safety advisory committee, the Board, non-government agencies and insurance companies should work together to provide farm safety education and information on the necessity of providing workers with protection against workplace injuries.

- Occupational Health and Safety Penalties

The Committee was asked to comment on the British Columbia procedure whereby the Board may:

- make an additional assessment on an employer who has committed a serious specific contravention of the Act and regulations; or

- require an employer to pay, to a maximum specified amount, all or part of the compensation costs arising from an accident caused by a contravention of the Act or regulations.

In British Columbia, the Workers' Compensation Board is responsible for both compensation and the Occupational Health and Safety Act. In Saskatchewan, there is a separate Occupational Health and Safety Branch which has responsibility for the enforcement of The Occupational Health and

Safety Act and regulations and there is, therefore, no need for the Board to become involved in the process. The Committee's position is that it is not appropriate for the Board to become involved in any aspect of enforcement of The Occupational Health and Safety Act and regulations or in the imposition of any form of penalty for violations.

- Sections 103, 104(2)

The Board has issued a directive #29/87 under which payment of benefits to workers under treatment at the Injured Workers' Program is suspended when they are unable to participate in the program because of illness or family emergency. The suspension is based on the premise that such workers are not available for work. It is obvious that any worker taking treatment at the Injured Workers' Program is not available for work. The Committee therefore recommends that the policy of suspending benefits of workers who are ill or are required to attend to a family emergency be discontinued.

- Personal Care Allowance

Under directive #21/87 the Board pays personal care allowances on the basis of differing levels of disability ranging from $272.00 for level one to $1368.00 for level four. The Committee recommends that the Board should not attempt to define levels of disability but deal with each case on its own merits and award allowances ranging from a minimum of $350.00 to a maximum of $1650.00. Payments are to be increased annually by the average percentage increase in the Consumer Price Index.

AMENDMENTS TO THE ACT

- **Section 2(k) - Definition of Injury**

During the course of public hearings there were some suggestions for changes to the definition of "injury". The Committee feels that the present broad definition of "injury" should remain as it is in the present Act except that the word "or" should be substituted for the word "and".

- **Section 54, 55, 56**

These sections impose duties on physicians and hospital officials who provide medical aid to injured workers which include the submission of reports to the Board. These sections should be amended to include not only physicians but all persons who are registered or licensed under any of the healing arts acts.

- **Sections 54(a), 56**

These sections should be amended so that the Board's right to obtain reports is confined to reports respecting the examination or treatment of the worker for the injury for which compensation is claimed.

- **Penalties**

Section 53 (failure to report an injury - employer)
Section 55 (failure to make report - physician)
Section 109 (employer not to collect from worker)
Section 125 (failure to make a statement - employer)
Section 130 (failure to permit inspection of books and accounts - employer)
Section 158 (failure to pay assessment for temporary industry-employer)
Section 164 (penalty for deductions from employees)
Section 177 (failure to comply with regulations)

The maximum penalty for contravention of the provisions of the above sections should be increased from the present level of $500 to $1,000 in each case.

- Section 57

This section should be amended to make it clear that licensed chiropractors are consultants for the purpose of this section.

- Section 62 and 63

Licensed chiropractors should be eligible to serve as members of Medical Review Panels. Sections 62(1), 62(2)(a), 62(2)(b), 62(3), 62(4) and 63(1) should be amended accordingly.

- Sections 68 and 69

The Committee's recommendations regarding the determination of wage loss and "deeming" require the following amendment to sections 68 and 69:

(1) in 68(1), replace the words "estimate the effect of the injury on the loss of earning capacity" with the words "determine the loss of earnings";

(2) in 68(1)(a) and 68(1)(b), delete the word "estimated";

(3) in 69(1), delete the words "loss of earning capacity" and replace with the words "loss of earnings"; and

(4) in 69(1)(b), delete the words "the earnings that the worker is estimated to be capable of earning" and replace with the words "the earnings that the worker is receiving from employment".

- Creation of New Section 68(5)

  As a result of increases in income tax and other deductions, the wage loss entitlement of some workers is or may be less than they received when they first became entitled to benefits. There should be a new subsection 68(5) stating that wage loss benefits shall not, as a result of any increase in income tax or other deductions, be less than the benefits the worker was receiving when he or she first became entitled to benefits.

- Section 69 - calculations of loss of earnings when worker retired prior to becoming aware of injury.

  When a worker opts to take early retirement and afterwards suffers a disability which is connected to the worker's former employment, the Act is unclear as to the basis for wage loss entitlement. Section 69 should be amended so that in such a case compensation is based on the worker's average weekly earnings at the time of retirement.

- Section 71 - workers 63 years of age or more when injured

  Section 71 provides that when a worker is 63 years of age or more at the time of commencement of loss of earnings resulting from injury, the worker is entitled to compensation for not more than two years following the date of injury. Since loss of earnings does not always occur at the time of injury, the words "following the date of injury" should be replaced with the words "following the date of commencement of loss of earnings". This will ensure that a worker to whom section 71 applies will receive benefits for two years.

- Section 83

  This section provides for benefits to dependant spouses of deceased workers for a period of five years following the death of the worker. The five-year period is extended till the youngest child attains the

age of 16 or, if any dependant child is in full-time attendance at a secondary or post-secondary institution, until the child attains the age of 18 years. Thereafter the dependant spouse is entitled to the monthly allowance less "the earnings that the dependant spouse is estimated to be capable of earning". As in the case of injured workers, the Board has pursued a policy of "deeming" dependant spouses capable of earning income from employment, even though the dependant spouse is not actually employed. The comments by the Committee on determining wage loss, "deeming" and the retraining of injured workers apply also to dependant spouses of deceased workers.

Therefore, section 83(4) should be amended by deleting the present section 83(4)(b) and by substituting the following:
"(b) the earnings that the dependant spouse is receiving from employment."

- <u>Section 85(1)</u>

The present section provides for payment of an allowance of $200 to a dependant child of a deceased worker who is 18 years of age or over and who is in full-time attendance at a secondary or post-secondary institution until the last month of the school term in which he or she turns 21.

The Committee recommends that the allowance now payable under 85(1)(c) be increased as of September 01, 1992 to $250.00. Payments are to be increased annually by the average percentage increase in the Consumer Price Index. A new section 85(1)(d) should be added to give effect to this increase.

The Committee recommends that section 85 be amended so as to provide benefits payable under 85(1) for dependant children who during any period or periods not exceeding three years are in full-time attendance at a secondary or post-secondary institution while they are between the ages of 18 and 25 years.

- **Section 86(1), 86.1, 87(4)**

  These sections should be amended to conform with the recommendations made with regard to section 85.

- **Section 87**

  This section reads in part: *"87(1) Where the only dependants of the worker are children, a monthly payment of $135 per child under the age of 16 years or where that amount has been increased pursuant to section 92, the increased amount shall be made."* As Consumer Price Indexing is applied to this section, the Committee recommends the $135.00 figure be amended to reflect current rates.

- **Section 88**

  This section empowers the Board, in its discretion, to pay benefits to the common-law spouse of a deceased worker if the common-law spouse was maintained as such by the worker for a period of two years preceding the death of the worker. The Board should have the discretion to decide whether a common-law relationship exists on the facts of each case and the Committee recommends that any reference in section 88(1) to a time requirement be eliminated.

- **Section 97(2)**

  The Committee recommends that the provisions of section 97(2) should apply only to surviving dependant spouses and that the section be amended by inserting the word "dependant" after the word "surviving".

- **Section 99**

  The Committee agrees with representations made to it that any disability benefits that the worker or dependant is entitled to receive under the Canada Pension Plan or the Quebec Pension Plan should not be considered as wages the worker is capable of earning and recommends that section 99 be repealed.

- Section 104

As noted previously in this Report, the Committee's recommendations on determining wage loss, "deeming", rehabilitation and retraining are based on the assumption that injured workers are committed to returning to suitable and available employment and are willing, if necessary, to retrain. However, provision must be made for the suspension of benefits in isolated cases where workers are unwilling to accept suitable and available employment or to retrain. Provision must also be made for the termination or reduction of benefits to the worker who, with the support of the Board, has undergone a course of training of two years or more (in addition to any educational upgrading required to enable the worker to enrol in such a course) and has been given a reasonable opportunity to find employment.

The Committee recommends that a new section 104(3) be created to empower the Board to suspend, in whole or in part, compensation based on the worker's loss of earning capacity if the worker has:

- without good reason, declined to accept a bona fide offer of employment in an occupation in which the worker is capable of engaging;

- without good reason, declined to participate in a program of occupational rehabilitation or training having as its objective the establishment of the worker in productive employment;

- at the expense of the Board, been provided with a training course of two years or more duration (not including any educational upgrading necessary to permit the worker to enrol in such course) and the worker has, following completion of such course, been allowed a reasonable time to obtain employment.

Section 104 should be further amended by providing that the proposed new section 104(3) also applies to dependant spouses after the

termination of entitlement to compensation pursuant to subsection (1) or (2) of section 83.

The Committee recommends that Section 104(2) be amended by:

- adding "in whole or in part" after "The Board may suspend"; and
- deleting "earning capacity" and substituting "earnings".

- Sections 106(2) and 107

In the section of this report dealing with medical issues, the Committee emphasized that all decisions regarding the medical treatment of injured workers are to be made by the worker's physician. The Committee wishes to remove from the Act any provisions which might be interpreted as empowering the Board to intervene in the treatment of injured workers.

The Committee therefore recommends that:
- section 106(2) be deleted; and
- section 107 be replaced with a provision that the Board shall not be responsible for furnishing medical aid outside the province unless authorized by the Board.

- Section 108(1)

This section should be deleted and replaced by a provision that the fees for medical aid furnished by any person licensed or registered under any of the healing arts acts shall be determined by the Board.

- Section 133(1)

The Committee recommends that this section should be amended so that the principal is liable only for the assessments of subcontractors relative to payroll expended on his projects.

- Section 104

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- Section 133(1)

The Committee recommends that this section should be amended so that the principal is liable only for the assessments of subcontractors relative to payroll expended on his projects.

- Section 171.1(1)

The Committee can see no reason to limit access by a worker or the worker's representative to information on the worker's file obtained after this section came into force. The Committee therefore recommends that the words "that is obtained on or after the date this section comes into force" be deleted. The result of this amendment would be that workers, for the purposes of appeal, would be entitled to all information on their file regardless of the date on which that information was obtained.

ISSUES REQUIRING FURTHER STUDY

The Committee received many submissions which encompassed numerous issues concerning the compensation system. Some of those issues have been addressed in this and the interim report. The following are some of the issues requiring more extensive study by the Committee.

- **Office of The Worker's Advocate**
  The Committee noted that public opinion regarding the services and benefits of the Office was divided. Some of the issues raised by injured workers requiring further study include delays in providing assistance to injured workers, under staffing, communications, backlog of cases and the perception of lack of independence from the Board.

- **An External Appeal Process**
  Several presentations requested an external appeal process so that injured workers could be confident that their appeals were heard by a tribunal that is independent of the Board. It is the Committee's hope that, given the adoption of the recommendations in this report, there will be less need for appeals. This, however, does not mean that the concerns of injured workers or their representatives are not valid. The Committee did not have ample time or resources to study other compensation systems which utilize an external appeal process. Further time is required to study internal and external appeal processes, their effectiveness and related jurisdictional issues.

- **Merit Rebates and Assessment Rates**
  The Committee received positive comments from employer organizations regarding the merit rebate system and suggestions for change from workers and unions. The merit rebate and surcharge programs need further in-depth examination before any recommendations for change are made.

- **Research Fund**
  Medical and other associations suggested to the Committee that a fund be developed for research into spinal and head injuries, occupational diseases and other injuries and illnesses resulting from the workplace. The requests were made because there is a desire on the part of some practitioners to better understand certain injuries and their possible treatment. It was felt the Board required more information in order to assist it to accurately determine the relationship between the workplace and the injury. The Committee would like to conduct a feasibility study and to assess other options such as forming networks with research and training institutions.

- **The Safety Grant Program**
  An extended Committee of Review would examine the current safety grant program in accordance with the recommendations made regarding "Safety Grants and Safety Education" in the section entitled "Other Considerations".

- **Revision of Legislation and Reorganization of The Act**
  One of the critical roles for an extended Committee of Review would be to consult with legislators to ensure the intent of its recommendations are adhered to in the writing of the amendments and regulations under the Act. The Committee would also provide its assistance in the reorganization of the Act in order to make it user friendly.

- **The Injured Workers' Program at The Wascana Centre For Rehabilitation**

- **Clarification of The Interpretation of Section 70**

REPORT # 1

BY THE

WORKERS' COMPENSATION ACT

COMMITTEE OF REVIEW

APRIL 1992

INTRODUCTION

The Workers' Compensation Act of Saskatchewan contains provision for a periodic review of the Act by a Committee of Review. Section 162 of the Act requires Cabinet to appoint a Committee at least once every four years. The Committee consists of eight members plus one chairperson, and is equally representative of organized employees and employers. The appointment of the current Committee became effective September 1, 1991.

In order to reach a good cross section of workers and employers the Committee placed newspaper advertisements in eleven weeklies and twice in two dailies. Approximately 1400 letters were sent to injured workers, including those who had been involved with deeming, rehabilitation, workers' advocates and appeals to the Board, dependants and organizations inviting them to make oral presentations and/or written submissions. The Committee received 213 written submissions and 305 injured workers, employers and organizations appeared before the Committee. Public hearings were held at:

Saskatoon	February 10 to 14, March 9
Regina	February 24 to 28, March 30
Prince Albert	March 10 to 11
Yorkton	March 23
Estevan	March 24
Moose Jaw	March 25

During the hearings, there were suggestions for changes to the Act, but the vast majority of criticisms were about the interpretation and administration of the Act.

In proposing measures to address the concerns expressed by injured workers and employers, the Committee wished to retain the beneficial elements of the Act. For example, fully funding liabilities ensures sufficient funds are set aside in the accident fund to guarantee payment of long term benefits. This funding must continue to be held in trust by the Board and never become intermixed with any other fund whether public or private.

Oral and written submissions identified many concerns all of which require in depth consideration by the Committee. This initial report addresses some of these issues, namely:

- Board Structure
- Mandate of the Review Committee
- Regulations
- Pensions for Old Act Spouses
- Death Benefits
- Pre-existing Conditions

BOARD STRUCTURE

A fundamental principle of workers' compensation is that the system should be administered within a very broad legislated mandate by a Board which truly reflects the needs of workers and employers.

Both groups expressed concern that present practice does not ensure Board accountability. The perception is that appointments are political in nature. Participation in the appointment of Board members by workers and employers and the appointment of a neutral chairperson should avoid any perception of politicization.

The Committee of Review therefore recommends:

- Board membership shall consist of a full time chairperson and 2 full time members representing organized workers and 2 full time members representing employers.

- The Lieutenant Governor in Council will appoint Board members from a list of 4 names submitted by employer associations and 4 names submitted by labour representatives nominated by the labour organization which, as published by the previous Department of Human Resources, Labour and Employment report, is most representative of workers. The above described labour organization shall consult with councils of unions and other unions to agree on the nominee(s).

- Initially, one labour board member and one employer board member shall be appointed for two years and the other employer and labour member shall be appointed for four years. Thereafter, all appointments and reappointments shall be made on a four year basis. Subsequent appointments shall be made from a list of a maximum of two names submitted for every vacancy.

- The Lieutenant Governor in Council shall appoint as chairperson of the Board a person mutually agreed to by the members of the Board. Board members shall mutually appoint an acting chair in case the chair is not able to perform his/her duties.

- The chairperson shall be appointed for a four year term.

- The chairperson and members of the Board may be removed for cause on address of the Assembly.

- The Act be amended to incorporate these recommendations.

THE REVIEW PROCESS - SECTION 162

The Committee of Review derives its authority from section 162 of the Act and from the Order in Council under which it was appointed. Section 162 reads in part:

> 162(1) The Lieutenant Governor in Council shall, at least once every four years, appoint a committee of review, consisting of five or more members as the Lieutenant Governor in Council may determine, to review and report upon any matters concerning this Act and the regulations that the Lieutenant Governor in Council may specify.

The Order in Council authorizes the Committee to review and report on "all matters concerning The Workers' Compensation Act, 1979, and the regulations made thereunder and the administration thereof".

The Committee can see no reason to restrict the scope of its enquiries, and recommends that the authority given to the Committee of Review by the present Order in Council be enshrined in legislation.

Traditionally, the Committee's mandate expires with the presentation of its report to the Minister and another committee is not appointed for three to four years. Employers and workers have assumed that recommendations which were approved by Cabinet would be reflected by changes in Board policy, procedures and attitudes. Throughout the hearings, the Committee heard representations about practices which continue despite recommendations of previous review committees. Concern was also expressed that the Committee's term is too short to participate in the implementation process.

The credibility of the review process has been questioned because a significant number of recommendations have not been implemented. The Committee wishes to remedy this situation.

The Review Committee's mandate should continue until the appointment of the next committee. Preserving the mandate has several benefits:

- It would allow the Committee to fulfil its obligation to assess issues raised by injured workers, worker representatives, employers and others, and to monitor the workers' compensation system on an ongoing basis and to make appropriate recommendations.
- The Committee would maintain communications with the Minister and the Board to facilitate the implementation of recommendations.
- It would ensure continuity and provide a mechanism for ongoing research.

The Committee of Review therefore recommends:

- The Minister extend the current Committee's term until the next committee is appointed.

- Section 162 be amended to read:

  162(1) The Lieutenant Governor in Council shall, at least once in every four years, appoint a Committee of Review, consisting of five or more members as the Lieutenant Governor in Council may determine, to review and report upon all matters concerning The Workers' Compensation Act, 1979, the regulations made thereunder and the administration thereof.

  (2) Members of the Committee appointed under subsection (1) shall hold office until a new Committee is appointed and shall be eligible for re-appointment.

  (3) The Lieutenant Governor in Council shall appoint as chairperson of the Committee a person mutually agreed to by the members of the Committee.

  (4) In the absence of the chairperson, the Committee may designate one of its own members to be acting chairperson.

  (5) The Lieutenant Governor in Council shall specify the number of members which constitutes a quorum.

  (6) In the event of the death, illness or resignation of a member of the Committee during his or her term of office the Lieutenant Governor in Council shall appoint a new member representing the employers or organized employees to ensure continued equal representation.

  Previous sections (3) to (5) will become sections (7) to (9).

REGULATIONS

A common complaint to the Committee of Review was that there are no well-defined and readily accessible rules governing Board practices and procedures.

Most Acts contain provisions for the enactment of regulations governing the practice and procedures to be followed in carrying out the purposes of the Act. The Workers' Compensation Act needs to be supplemented by regulations governing the procedures to be followed in the administration of the Act.

Currently, section 181 reads:

> 181 Subject to the approval of the Lieutenant Governor in Council, the Board may make any regulations that it considers necessary to carry out the purposes of this Act and to meet cases not provided for by this Act.

This section is a marked departure from other Acts which empower the Lieutenant Governor in Council to make regulations prescribing standards and rules. As written, only the Board can initiate regulations.

The Committee of Review therefore recommends:

- Section 181 be amended to empower the Lieutenant Governor Council to make regulations under the Act in consultation with the Board and the Committee of Review.

SECTION 50 - PRE-EXISTING CONDITIONS

A common concern heard by the Committee of Review was the Board's application of section 50. The problem is that many workers who were functioning quite satisfactorily at their place of employment have had their claims rejected or their benefits terminated because it was found they had a previously existing condition although that condition had not, prior to the accident, manifested itself in any physical or functional disability.

Section 50 of the Act reads:

> **50** The board shall not reject the claim of a worker for compensation or reduce the amount of compensation payable to him by reason of a functional condition of the worker that exists at the time of the injury in respect of which compensation is claimed, where that condition did not result in any functional impairment to the worker and did not affect the ability of the worker in his employment.

It is quite apparent to the Committee that there are conflicting interpretations of this section. All Committee members are agreed that the problem needs to be addressed but differ as to the nature of the amendment.

The employee representatives are of the opinion that the clarification required should be stated in the following way:

> Compensation shall be payable if, due to the combination of work injury and pre-existing condition, the person suffers a greater disability by virtue of that combination. This applies to either the pre-existing non-disabling or asymptomatic condition, previously diagnosed or undiagnosed, which has been triggered into becoming symptomatic or disabling as a result of the work injury, or the aggravation, acceleration or worsening of the work injury or both.

The employer representatives are of the view that the clarification required is:

> Compensation shall be payable if, due to the combination of work injury and pre-existing physical condition, the person suffers a greater disability by virtue of that combination. Section 50 was drafted to ensure that a pre-existing physical condition aggravated by an injury would not affect a workers' right to compensation if, prior to the accident, the condition did not interfere with the workers' ability to perform his or her job. It was to include the entire healing time it takes for the employee to get well again and not just the average length of time it would take for recovery of the work injury without the pre-existing physical condition. The Board has ruled on some claims that the remaining disability is due to the underlying non-compensable condition and as a result the Board is no longer responsible. This would be

appropriate only if the pre-existing physical condition has not been aggravated, worsened or accelerated as a result of the injury.

DEATH BENEFITS

The Committee of Review recommends that section 82(2)(a) be amended to read:

(2) In addition to any compensation payable under this Act to dependants, the board shall also pay:

(a) $5,000 to assist with the necessary expenses of the death of the worker such as burial;

(3) The Board shall review annually the average cost of burial and increase the amount payable in Section 82(2)(a) to assist with the necessary expenses of the death of the worker.

The Committee of Review recommends this become effective as of January 01, 1992.

PENSIONS FOR OLD ACT SPOUSES

The Committee of Review recommends:

- the pension received by old Act spouses at the age of 65 be increased by $100.00 from $530.00 per month to $630.00 per month; and
- the cost come out of the pension reserve fund which specifically covers the cost of all former Act pensioners.

The Committee of Review recommends this become effective as of January 01, 1992.

CONCLUSION

The next report will include the Committee's recommendations on Board philosophy, processing of claims, communications, deeming, medical issues, and vocational rehabilitation.